THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

C.R.P.No.5093 of 2009

ORDER:

The present revision is preferred against the order of the Senior Civil Judge, Rajam in I.A.No.15 of 2009 in M.O.P.No.9 of 2008 dated 8.7.2009.

2. The revision petitioner herein had filed M.O.P.No.9 of 2008 seeking restitution of conjugal rights. I.A.No. 15 of 2009 is filed to recall PW.1 to mark the documents stated to be a notice and a reply notice, which the petitioner herein claims could not be filed earlier as they were subsequently traced. After a counter affidavit was filed by the respondent, the Court below noted that the matter was posted for arguments, on the evidence of either side being closed, and that the petitioner had filed the I.A. seeking reopening of their evidence to enable notice and reply notice to be marked. The court below observed that, in his chief examination while the petitioner had stated that a legal notice was issued on 16.8.2007, nowhere had he mentioned regarding the alleged notice issued by Sri T.Seshachary, Advocate on 22.2.1998 or that he had received the reply notice from Balaga Satyavathi through his Advocate Sri C.Sankara Rao on 8.10.1998. The Court below noted that there was no mention about the alleged notices either in the petition averments or in the evidence affidavit filed by the petitioner herein and it was at the belated stage of arguments that some documents were sought to be marked. The court below held that these documents could not be permitted to be marked at this stage as it would cause prejudice to the respondent and that there were no bonafide grounds to allow this petition. Accordingly the I.A. was dismissed.

3. Sri Taddi Nageswara Rao, learned counsel for the petitioner, would submit that the court below, under Order VII Rule 14(3) CPC, had the discretion to permit evidence to be reopened to enable the documents not

filed earlier to be marked and exercise of discretion, which the court had, was certainly not an inconvenience nor could it be said to cause any prejudice to the respondent. Learned counsel would submit that the finding of the court below that permitting these documents to be marked at a belated stage would cause prejudice to the respondent was a perverse finding necessitating interference in revision proceedings under Article 227 of the Constitution of India.

4. As noted hereabove, the court below has not rested its conclusions merely on the ground that it would cause prejudice to the respondent. It observed that there was lack of pleadings and no mention was made regarding the notice and the reply notice in the affidavit in chief filed by the petitioner and, in the absence of a plea or any evidence making a reference to these documents earlier, there were no bonafide grounds to allow this petition.

5. Jurisdiction of this court under Article 227 of the Constitution of India is supervisory and unless manifest injustice is occasioned, or a clear case of transgression of jurisdiction or a perverse finding having been recorded, is made out this court would not interfere. I see no perversity in the order of the court below. The revision petition fails and is, accordingly, dismissed.

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RAMESH RANGANATHAN,J

17.11.2009
Stp